

where the amount set by the legislature for District Court jurisdiction is a higher amount than the amount required for other jury trials. It would then be possible to have, if the legislature so wanted, a jury of less than twelve. The legislature could also arrange for juries of less than twelve in the Superior Court, but we thought it was desirable to put a bottom to this figure. That is why we use the figure of six but we had no intention of limiting the legislature or even requiring the legislature to take any action on this.

THE CHAIRMAN: Is there any other discussion?

*(There was no response.)*

Are you ready for the question?

*(Call for the question.)*

The Clerk will ring the quorum bell.

The question arises on the adoption of amendment No. 17. A vote Aye is a vote in favor of the amendment; a vote No a vote against.

Cast you votes.

Has every member voted?

Does any delegate desire to change his vote?

*(There was no response.)*

The Clerk will record the vote.

There being 15 votes in the affirmative and 90 in the negative, the motion fails. The amendment is rejected.

Are there any other amendments to section 7?

*(There was no response.)*

The Chair recognizes Delegate Kiefer for another statement with respect to section 5.

DELEGATE KIEFER: Mr. Chairman, ladies and gentlemen of the jury—I guess this is the jury. I just want you to know first of all that anything I said earlier to Delegate Willoner, what may have appeared to be sharp, was not intended in any way as pique, but rather to settle something once and for all. I have a great deal of admiration and respect for this young fellow. I wanted to say and what I wanted to make clear, however, and he may not agree to it—if he does not, then he had better do something else about it—was that in considering this matter, I believe it was the Committee's intention that we were considering the three articles that are contained in the present Declaration of Rights.

The first is Article 5, which again I would like to read to you very quickly, and

point out that we thought that the entire article belonged in the constitution. Part of it belongs in the general provisions section because it is transitory, and carries on the common law. We do include most of it in our Recommendation R&P-2 in section 6. If you compare that section with the present Declaration, Article 5, you will see that we have omitted from the recommendation that portion of Article 5 which says: that "the inhabitants of Maryland are entitled to trial by jury according to the course of that law."

Now, I will be the first to say that you will not find a reference in our memorandum to Article 5. That was really an oversight; nor will you find a reference to Article 23, which is the due process article in the present Maryland Declaration of Rights.

I believe it was the intent of the Committee that when we re-wrote the article, we were covering these two articles as well as Article 21. We did not take into consideration the necessity of a statute nor did we know about these obscure cases.

We were restating what we thought was the constitutional law, and that is what we stand on now.

THE CHAIRMAN: Very well, on the basis of that statement the Chair will state that he thinks the intent of the Committee, and, therefore, of the Committee of the Whole, is that section 5(a), in guaranteeing a right of trial by jury, does so with the same meaning as provided in article 5 of the present Declaration of Rights, so that it would authorize the legislature to provide for trial without a jury in petty offenses, as that term is interpreted in the earlier cases. That being the case, the Chair would suggest if any delegate disagrees with that interpretation, the best way to make the intent of the Committee clear would be to offer an amendment so indicating.

For what purpose does Delegate Scanlan rise?

DELEGATE SCANLAN: To put a footnote on *ex post facto* legislative history, I just want to say that the late Justice Jackson once said that legislative history is a very slim reed to rely on to ascertain the meaning of the English language. I think he would have turned over in his grave if anybody suggested to him that *ex post facto* legislation could determine the meaning of the words "by a legislative body." I will keep secret what I voted on that last proposal.

THE CHAIRMAN: Delegate Hardwicke.